IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1922 OF 2005
IN
APPEAL NO.855 OF 2003

(M/s.Holdings Ltd. V. Shyam Madan Mohan Ruia & Others)

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.F.E.D'Vitre senior counsel with Mrs.M.S.Diwan and Ms.Deepa Mani i/b S.K.Srivastav for appellants and for respondent no.11 in Appeal Nos.840/03, 857/03, 841/03.

Mr.R.A.Kapadia senior counsel with Jimmy Awasia i/b R.A.K.Najam-e-Sani for respondent nos.1 to 8 in all appeals.

Mr.A.Y.Bookwala with Mr.A.S.Doctor and Mr.K.K.Shroff i/b Kanga & Co. for respondent no.10 in all appeals.

Mr.J.B.Chinoi with Mr.S.Jain and N.K.Madnaney for respondent no.11 and for appellant in Appeal Nos.840/03, 841/03 and 857/03.

Mr.P.K.Samdani with Mr.A.Jaiswal for respondent no.9.

CORAM: V.G.PALSHIKAR &
D.B.BHOSALE, JJ.

DATED: 28TH SEPTEMBER, 2005

P.C.:

. By this motion, the appellants pray that certain documents pertaining to transfer of 75,001 shares of respondent no.10 be produced in the Court. The affidavit in support of the motion says that this being the relevant

document the perusal of same is essential to meet the ends of justice.

2. This prayer is opposed by the respondents on following grounds: (1) It is not that the documents are squarely covered by the provisions of Order 11 Rule 18 of the Civil Procedure Code. (2) That roving enquiry in possible evidence is not permissible in law. (3) The document, production of which is sought is the document to which according to the respondents, M/s.Holdings Ltd. are party and, therefore, the appellants need not seek production as they themselves must be preky to the document or must have knowledge of the document. Several judgments of this Court and other High Courts including the Supreme Court are relied upon by the parties and it is contended that within ambit of Order 11 Rule 18 Code of Civil Procedure such production of document is not possible.

3. This Notice of Motion arises basically from Suit No.509/2001.

Initially Civil Suit No.2499/1999 was filed seeking enforcement of clause in agreement dated 23rd June, 1997 in which Notice of Motion No.1804/1999 was filed seeking restraintment on the defendants preventing them from committing breach of clause 6.1.

4. Thereafter civil suit No.509 of 2001 was filed for declaration that termination of the contract dated 23.6.1997 was valid in which Notice of Motion No.392/2001 was filed seeking order restraining the defendants in that suit from transferring the shares to anybody during pendency of the suit. This Notice of Motion is decided and the order is impugned in the present appeals. The document of which production is sought is document as alleged under which 75001 shares which are subject matter of dispute in Civil Suit No.509/2001 are transferred and, therefore, for proper and complete adjudication of this suit as also the present appeal, the production of that document is necessary.

5. In our opinion this Court has power under section 94 of the Civil Procedure Code in order to prevent the ends of justice from being defeated to make such order as appear to the Court to be just and convenient. In our opinion production of this document is not at all inconvenient to any party and it is necessary for proper and complete adjudication of the appeal pending hearing before this Court. Hence the Notice of Motion is allowed. The respondents are directed to produce the document within 15 days from today. On such production the appeal shall be heard further. The status quo order passed in main appeal would continue for three weeks. Liberty to apply for fixed date of hearing.

6. The parties and all concerned to act on an ordinary copy of this order duly authenticated by the Registry of this Court.

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